

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PURCELL BRONSON and LEON
HARRIS,

Plaintiffs,

v.

C.O. LEEDOM, C.O. MARTIN, C.O.
SNOOK and SGT. KLINEDINST,

Defendants.

CIVIL ACTION NO. 3:04-CV-1899

(JUDGE CAPUTO)

MEMORANDUM

Presently before the Court are the Report and Recommendation of Magistrate Judge J. Andrew Smyser (Doc. 26), Plaintiff's Objections to the Magistrate Judge's Report and Recommendation Dated Jan. 27, 2005 (Doc. 27), and Defendants' Brief In Opposition to Plaintiff's Objections to the Magistrate Judges Report and Recommendation Dated January 27, 2005 (Doc. 28).

Where objections to the magistrate judge's report are filed, the Court must conduct a *de novo* review of the contested portions of the report, *see Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(C)), provided the objections are both timely and specific, *see Goney v. Clark*, 749 F.2d 5, 6-7 (3d Cir. 1984). In making its *de novo* review, the Court may accept, reject, or modify, in whole or in part, the factual findings or legal conclusions of the magistrate judge. *See* 28 U.S.C. § 636(b)(1); *Owens v. Beard*, 829 F. Supp. 736, 738 (M.D. Pa. 1993). Although the review is *de novo*, the statute permits the Court to rely on the recommendations of the magistrate judge to the extent it deems proper. *See United States v. Raddatz*, 447 U.S. 667, 675-76

(1980); *Goney*, 749 F.2d at 7; *Ball v. United States Parole Comm'n*, 849 F. Supp. 328, 330 (M.D. Pa. 1994). Uncontested portions of the report may be reviewed at a standard determined by the Court. See *Thomas v. Arn*, 474 U.S. 140, 154 (1985); *Goney*, 749 F.2d at 7. At the very least, the Court should review uncontested portions for clear error or manifest injustice. See, e.g., *Cruz v. Chater*, 990 F. Supp. 375, 376-77 (M.D. Pa. 1998).

Pursuant to Local Rule 72.3, objections to a report and recommendation must specify the portions of the report to which objection is made as well as the basis for the objection. In his objections, Plaintiff Bronson states that he is objecting to the report and recommendation in its entirety. (Doc. 27 at 1.) However, the only basis upon which Plaintiff Bronson relies in his objections is a purported factual error made by Magistrate Judge Smyser.

Plaintiff Bronson refers in his objections to Magistrate Judge Smyser's statement that "plaintiffs have not provided names of those prisoners." (Doc. 26 at 6.) Plaintiff Bronson points out that the names of the prisoners were set forth in the Complaint. (See Doc. 1 at ¶ 15.) Plaintiff Bronson argues that in light of this apparent error, the only logical conclusion is that Magistrate Judge Smyser is biased against him. The Court disagrees. Even assuming that Magistrate Judge Smyser should have consulted the Complaint, the magistrate judge recommended that the request for preliminary injunctive relief with respect to the assaults be denied because of the absence of imminent irreparable harm due to the transfer of Defendant Leedom. Therefore, the Court will overrule Plaintiff Bronson's objections.

Having reviewed the remainder of the report and recommendation for clear error

or manifest injustice, the Court will adopt the report and recommendation and deny Plaintiff Bronson's requests for preliminary relief.

An appropriate Order follows.

May 24, 2005

Date

/s/ A. Richard Caputo

A. Richard Caputo

United States District Judge

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NO. 3:04-CV-1899

(JUDGE CAPUTO)

ORDER

NOW, this 24th day of May, 2005, **IT IS HEREBY ORDERED** that:

- (1) Plaintiff Bronson's objections are **OVERRULED**.
- (2) The Report and Recommendation (Doc. 26) is **ADOPTED**.
- (3) Plaintiff Bronson's requests for preliminary injunctive relief (Docs. 13, 17, & 23) are **DENIED**.
- (4) This matter is **RECOMMENDED** to Magistrate Judge Smyser for further proceedings.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge